

ARTICLE 10

ARBITRATION

1. **Introduction:** If the decision on a grievance processed under the negotiated grievance procedure is not acceptable, the issue may be submitted to arbitration. For simple, nonprecedential cases in which the facts are not in dispute, the parties may agree to use an expedited process as described in Section 10 of this Article. The invoking party is encouraged to discuss using expedited arbitration with the responding party prior to invoking arbitration, so that an appropriate list of arbitrators can be obtained.
2. **Process for invoking arbitration of a grievance:**
 - a. Prior to invoking arbitration, the invoking party will submit a request to the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA) for a list of seven impartial persons qualified to act as arbitrator.
 - b. The notice invoking arbitration must be in writing, signed by an Officer of the National Federation of Federal Employees (NFFE) Forest Service Council (FSC) or the Local Union President, or the appropriate Management official, and submitted to the other party within 28 days following issuance of the final grievance decision. If a final grievance decision is not received within the established timeframe per Article 9, then the 28-day timeframe to invoke arbitration begins the day after the final grievance decision was due. Invocation of arbitration notice will include a copy of the list of arbitrators or copy of the request for a list of arbitrators of FMCS- or AAA-certified arbitrators. Failure to invoke arbitration within the 28 days will result in termination of the grievance.
 - c. After arbitration is invoked, the parties may mutually agree to use a dispute resolution process. Use of the dispute resolution process does not suspend any of the timeframes in this article unless mutually agreed by the parties.

- d. The party invoking arbitration may opt to postpone the arbitration hearing date if that party has filed an Unfair Labor Practice (ULP) charge alleging information relevant to the case has been withheld until the Federal Labor Relations Authority (FLRA) has rendered its decision.
- 3. Where there are a number of grievances concerning the same issue, the parties will review the issue and may mutually agree to combine the grievances for a single decision on all the cases by the arbitrator.
- 4. **Selecting the Arbitrator:** unless otherwise agreed, the following process will be used:
 - a. Within 21 days after receipt of the list of arbitrators, Management and the Union shall confer to select an arbitrator. If either party fails to participate in the selection process, the other party will make a selection of the arbitrator from the list.
 - b. If the parties cannot agree on an arbitrator from the list, each party shall strike one name in turn from the list. The determination of which party shall strike first from the list will be determined by the flip of a coin. After each party has struck three names from the list, the remaining person shall serve as the arbitrator.
- 5. **Submissions:**
 - a. The parties are encouraged to jointly frame the issue(s) prior to the start of the arbitration hearing.
 - b. If the parties cannot agree on a joint statement of the issues, they will submit separate statements to each other and to the arbitrator. The arbitrator will decide the issues to be heard on this basis.
- 6. **Arbitration Process:**
 - a. If the parties do not agree to expedited arbitration, a formal hearing shall be held.
 - b. The parties agree that Union and Management representatives for each arbitration will be limited to two representatives: a lead representative and a technical representative for each party, unless otherwise agreed. The

representatives will be identified as soon as possible to each other prior to the hearing.

- c. The parties agree to exchange witness lists and/or information that is germane to the case with each other prior to the arbitration through a designated official. This period of exchanging witness lists and requesting information will end 14 days prior to the arbitration date. Information germane to the case will be furnished to the parties no later than 10 days prior to the arbitration hearing. Questions raised as to whether a witness is necessary or information is germane will be resolved by the arbitrator.
- d. Upon selection of the arbitrator in a particular case, the respective representatives for the parties will communicate jointly with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing. The parties will endeavor to schedule the hearing within 90 days after arbitration is invoked. If the parties are unable to mutually agree and schedule a hearing date within 90 days, the arbitrator will select a date.
- e. If the arbitrator is not available within the time frame, the parties shall agree either to extend the time frame or select a different arbitrator.
- f. All communications with the arbitrator will include the other party unless otherwise mutually agreed.
- g. The arbitrator will be requested to render the decision and remedy to the parties as quickly as possible, but, in any event, no later than 30 days after the conclusion of the process as described above unless the parties otherwise agree.
- h. The arbitrator's decision shall be final and binding, unless an exception is filed with the FLRA or judicial review is sought. If no exception/review is filed, the arbitrator's decision and remedy will be implemented.
- i. The intent of the parties is for all participants to act within the time limits allowed within this article. However, time limits in this article may be extended by mutual consent.

7. Authority:

- a. The arbitrator's authority is limited to the adjudication of issues that were raised in the grievance procedure or pursuant to Section 9. The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Master Agreement, or any supplement thereto.
- b. In considering grievances concerning actions based on unacceptable performance and adverse actions appealable to the Merit Systems Protection Board (MSPB), the arbitrator shall be governed by 5 U.S.C. 7701 (c)(1) and, to the extent applicable, by the precedential decisions of MSPB.
- c. The arbitrator shall have the authority to require the parties to produce information to the extent allowed by statute, law, and/or regulation.

8. Fees and Expenses:

- a. The cost of arbitration, including panel requests fees and arbitrator's fees and expenses, shall be borne by the losing party. When a decision does not clearly favor one party's position over the other, the arbitrator may specify that all costs should be borne equally by the parties.
- b. The cost of arbitration expenses for threshold or enforcement issues will be paid by the losing Party in each proceeding.
- c. If a clarification of an arbitrator's decision is necessary, the requesting party will pay for the additional arbitration fees and expenses. The arbitrator will be requested to complete the clarification within 30 days. If jointly requested, the costs will be shared.
- d. An employee, who is found to have been affected by an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee, is entitled, on correction of the personnel action, to receive reasonable attorney fees related to the personnel action, awarded in accordance with standards established under Section 7701(g) of Chapter 71, Title 5, of the United States Code (5 U.S.C. 7701(g)).
- e. The arbitration hearing will be held, if possible, on Management's premises and during the regular day-shift hours unless mutually agreed otherwise.

- f. Absent an emergency or other special circumstance, the grievant and any employee called as a witness, under subsection 6.c, will be released from duty to the extent necessary to participate in the scheduled official proceedings. Their participation will be on official time and with travel expenses as authorized in agency travel regulations. If Management determines that the grievant or an employee called as a necessary witness cannot be released to participate at the scheduled time, Management will notify the Arbitrator and the Union as soon as practical and explain why the employee(s) must be withheld from participating and when Management expects to be able to make the employee(s) available. The parties shall defer to any ruling by the Arbitrator as to how to resolve the issue. If Management determines that the grievant or an employee called as a witness cannot be released at the scheduled time, Management will be considered to have raised the issue, and subsection 8.i below will apply.
- g. Those Union representatives employed by the Forest Service will be entitled to official time, travel, and per diem expenses.
- h. Employee participants on shifts other than the regular day shift will be temporarily placed on the regular day shift for the pay period(s) of the hearing in which they are involved.
- i. If threshold or other issues are raised later than the arbitrator's cancellation date, then the party raising the issue shall be responsible for the costs incurred to reschedule the arbitration on the merits of the grievance unless mutually agreed otherwise by the parties.
- j. Transcripts: The cost of a transcript, requested by one party for its exclusive use and not shared, shall be borne by the requesting party. If it is mutually agreed to request a transcript, the cost will be borne equally.

9. Grievability/Arbitrability/Timeliness Threshold Determinations:

- a. The Parties agree that threshold issues should be raised as soon as possible, preferably during the grievance process. If not previously raised during the grievance process, the parties will raise threshold issues by submission of a written statement of the issue, including any supporting documentation, to the

other party. If the parties are unable to resolve the issue, the party raising the issue may submit it to arbitration. The arbitrator to whom the issue is submitted shall have the authority to settle the threshold issue.

- b. Threshold questions shall be resolved and decided by a separate arbitration prior to the hearing on the merits of the grievance. If requested by either party, the threshold issue will be decided by an arbitrator different from the one selected to hear the merits of the case.

10. Expedited Arbitration: In an effort to reduce time and expenses of some grievance arbitrations, the parties may agree to expedited procedures that may be appropriate in certain nonprecedential cases or those that do not involve complex or unique issues. Expedited arbitration is intended to be a mutually agreed upon process whereby arbitrator appointments, hearings, and awards are acted upon quickly by the parties and the arbitrators. The process is streamlined by mandating short deadlines and eliminating requirements for transcripts, briefs, and lengthy opinions. The parties may elect to use the expedited processes of FMCS, AAA, or any of the procedures described below:

- a. A stipulation of facts to the arbitrator can be used when both parties agree to the facts at issue and a hearing would serve no purpose. In this case, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.
- b. An arbitrator inquiry may be used to expedite the resolution of the grievance. In this case, the arbitrator would make such inquiries as he or she deemed necessary, prepare a brief summary of the facts, and render an on-the-spot decision with a summary opinion. The parties may mutually agree to eliminate the summary opinion.
- c. Mini-arbitration: In this case, an oral hearing will be held. The arbitrator will prepare a brief summary of the facts and render a decision with a summary opinion. The parties may mutually agree to eliminate the summary opinion.
- d. Mediation-Arbitration: The parties may mutually agree to a certified AAA or FMCS arbitrator who will use a mediation-arbitration process to determine the outcome of the case.

11. Exceptions and Appeals:

- a. An exception to the arbitrator's decision may be filed in accordance with FLRA regulations.
- b. For arbitration cases related to actions taken under 5 U.S.C. 4303 (unacceptable performance) and 5 U.S.C. 7512 (suspension of greater than 14 days, demotions, removals, etc.) either party may request judicial review during the 30-day period beginning on the date the Award is served on the party for cases in which discrimination covered by 5 U.S.C. 7702 is alleged as a basis for the appeal and 60 days for non-discrimination cases.

12. Implementation of Arbitration Awards: To facilitate implementation of the Award, the arbitrator who heard the threshold issues and/or merits of the case will retain jurisdiction until the Award is implemented. Arbitration Awards will be implemented as soon as possible following the final decision. A decision is not considered final until all exceptions, if any, are resolved.